



**STATE OF NEW JERSEY**

In the Matter of Scott Clark, <i>et al.</i> ,	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Supervising Public Safety	:	<b>OF THE</b>
Telecommunicator (PC3100C), Morris	:	<b>CIVIL SERVICE COMMISSION</b>
County	:	
	:	
	:	
CSC Docket Nos. 2022-670, <i>et al.</i>	:	Examination Appeals
	:	
	:	
	:	

**ISSUED: NOVEMBER 22, 2021  
(SLK)**

Scott Clark, Tyler Frey, Kyle Hoffman, Kirk Keyes, Terence O'Brien, Russell Prokop, Joseph San Roman, and Frederick Sharp appeal the determinations of the Division of Agency Services (Agency Services) that they lacked the required amount of permanent status in a title to which the Supervising Public Safety Telecommunicator (PC3100C), Morris County, examination was open. These appeals have been consolidated due to common issues presented.

The examination at issue was announced open to employees in the competitive division who currently serve in the title of Senior Public Safety Telecommunicator and who had an aggregate of one year of continuous permanent service as of the March 22, 2021, closing date in that title. A total of 20 employees applied to the subject examination and eight were determined eligible. Certification PL211072 was issued containing the names of the eight eligibles and its disposition is due December 16, 2021. The list expires on September 8, 2024.

A review of agency records indicates that the appellants were permanently appointed as Senior Public Safety Telecommunicators on certification PL200845, effective September 22, 2020. Therefore, Agency Services determined that the appellants were not eligible for the subject examination since they lacked one year of continuous permanent service as of the March 22, 2021, closing date in a title to which the examination was open.

On appeal, the appellants submit a Special Order from the appointing authority's Department of Law and Public Safety that was issued on March 18, 2020, that indicates that the appellants were promoted to Senior Public Safety Telecommunicator, retroactive to March 1, 2020. The Special Order also indicates

that other employees were provisionally appointed to this title retroactive to the same date. Additionally, the appellants submit personnel requisitions forms, personnel records, and/or earnings history from the appointing authority indicating that they were appointed to Senior Public Safety Telecommunicator, effective March 1, 2020. Therefore, they believe that they possess the required continuous permanent service in a title to which the subject examination was open as of the closing date.

### CONCLUSION

*N.J.A.C.* 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

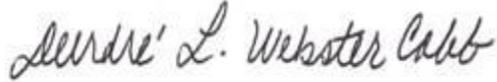
In the instant matter, the subject promotional announcement was only open to employees who had one year of continuous permanent service in the Senior Public Safety Telecommunicator title immediately preceding the March 22, 2021, closing date. However, the record indicates that the appellants only had six months of continuous permanent service in that title based on the September 22, 2020 appointments. The appellants argue that they were promoted to Senior Public Safety Telecommunicator on March 18, 2020, retroactive to March 1, 2020. They submit a Special Order, personnel records, and/or earnings history from the appointing authority to support their claims. However, it is noted that it is only this agency that can approve a permanent appointment. *See In the Matter of Asa Paris* (MSB, decided February 13, 2008), *aff'd on reconsideration* (CSC, decided September 10, 2008). Additionally, it is irrelevant that the appointing authority labeled their "appointments" as "permanent" and others as "provisional." At best, what the appellants have documented was that they were provisionally appointed to Senior Public Safety Telecommunicator, retroactive to March 1, 2020. In order to achieve a permanent appointment, a candidate must take an examination, be ranked and appointed from a subsequent list and successfully complete a working test period. Further, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987). Accordingly, Agency Services correctly determined that the appellants lacked the required continuous permanent service in a title to which the examination was open immediately preceding the closing date.

### ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 17<sup>TH</sup> DAY OF NOVEMBER 2021



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c: Scott Clark (2022-670)  
Tyler Frey (2022-620)  
Kyle Hoffman (2022-659)  
Kirk Keyes (2022-671)  
Terence O'Brien (2022-610)  
Russell Prokop (2022-572)  
Joseph San Roman (2022-529)  
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